

# EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----X  
In Re: Chapter 11  
  
Case No.  
01-01139 JKF  
  
W.R. Grace & Co., et al.,  
  
Debtors. (Jointly Administered)

-----X

\* \* \* CONFIDENTIAL \* \* \*

— — —  
May 13, 2009  
— — —

DEPOSITION of RICHARD FINKE, held  
at the offices of Kirkland & Ellis, 655  
Fifteenth Street, N.W., Washington, DC,  
commencing at 9:32 A.M., on the above  
date, before Lisa Lynch, a Registered  
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1 to pay 150 million dollars of its stock  
2 into the Trust and that the holding was  
3 that the confirmation of that Plan  
4 required the insurer to immediately pay  
5 UNR the value of that stock. And my  
6 question to you is: Is it the intention  
7 of the insurer neutrality Plan provision  
8 in this Plan to protect the insurers from  
9 such a result in this case?

10 A. I believe that it is  
11 Grace's intent, yes.

12 MR. COHN: Okay, I have no  
13 other questions.

14 MR. BROWN: I have a couple  
15 of follow-ups.

16 MS. HARDING: Anybody on  
17 the phone that has questions?

18 MR. KRAMER: I know Dan  
19 Speights will have questions.

20 MR. DOWNEY: I have  
21 questions. This is Phil Downey for  
22 Scotts but I'm happy to wait my  
23 turn.

24 MR. COHN: If I may suggest

1           that PD be held to the end?

2                   MS. HARDING: Yeah, so  
3           we'll wait for PD folks to the end.  
4           Are there insurers on the phone  
5           that have any questions? Any  
6           insurers on the phone? No?

7                   MR. MANGAN: I may have  
8           questions. This is Kevin Mangan on  
9           behalf of the State of Montana.

10                   MS. HARDING: Okay, great.

11   EXAMINATION BY

12   MR. MANGAN:

13                   Q.     Good afternoon, Mr. Finke.  
14   Can you hear me all right on the phone?

15                   A.     Yes.

16                   Q.     Okay, great.

17                   Are you aware the State of  
18   Montana's filed a claim for contribution  
19   and indemnification against Grace?

20                   A.     Yes.

21                   Q.     And in this bankruptcy,  
22   obviously?

23                   A.     Yes.

24                   Q.     And a proof of claim.

1                   **How is the State classified under**  
2   **the Plan?**

3                   MS. HARDING: Object to  
4                   form. Go ahead, to the extent you  
5                   know.

6                   A. As a Class 6 indirect PI  
7   Trust claim.

8                   **Q. What is the basis for that**  
9   **classification?**

10                  A. Well --

11                  MS. HARDING: I'm just  
12                  going to object to the extent that  
13                  it calls for attorney-client  
14                  privilege or work product  
15                  communications. To the extent you  
16                  can answer without divulging that,  
17                  then go forward. And to the extent  
18                  that -- I do agree that it's broad  
19                  and I'm not sure I understand what  
20                  he's asking about, but if you do,  
21                  Richard, go ahead.

22                  A. My answer is going to be  
23   the definition of indirect PI Trust claim  
24   in the Plan.

1           Q.     Is it your position that  
2     contribution and indemnification claims  
3     fit within the indirect PI definition?

4           A.     Yes.

5           Q.     Mr. Lewis had asked you a  
6     series of questions with regard to the  
7     treatment of Libby claimants' claims under  
8     the Plan and their claims specifically as  
9     to Maryland Casualty, the State of Montana  
10    and Burlington Northern. Do you recall  
11    that questioning?

12          A.     Yes.

13          Q.     I believe you testified --  
14    and obviously correct me if I'm wrong --  
15    that the Libby claimants' claims against  
16    the State that give rise to the State's  
17    claims against the debtors for  
18    indemnification or contribution go into  
19    the Trust.

20                   MS. HARDING: Object to  
21                   form.

22          Q.     Is that your testimony?

23          A.     That the Montana -- that  
24    the State of Montana's claims for

1 indemnification would be channeled to the  
2 Trust, yes.

3 Q. And you also testified that  
4 the State does not get the benefit of the  
5 524(g) injunction?

6 A. That's correct.

7 Q. Sir, you testified that to  
8 the extent there was independent conduct,  
9 those claims would not go into the Trust.  
10 Is that correct?

11 MS. HARDING: Object to  
12 form and I think it's -- it doesn't  
13 properly characterize the extent  
14 and -- extent of everything that  
15 you said but to the extent you can  
16 answer, go ahead.

17 Q. If you want to clarify what  
18 you testified to earlier as far as  
19 independent conduct not going to the  
20 Trust, I'd appreciate it.

21 A. Right. I believe I  
22 testified that it is our understanding  
23 that to the extent the State of Montana's  
24 liable to Libby claimants based on causes



1 of action that are separate and  
2 independent from any Grace liability, that  
3 the -- that the State's liability would  
4 not be -- or the State would not have  
5 recourse to the PI Trust for that  
6 liability.

7 **Q. What do you mean by**  
8 **separate and independent liability from**  
9 **Grace's liability?**

10 MS. HARDING: Object to  
11 form. It think calls for  
12 speculation. But to the extent you  
13 can answer, go ahead.

14 A. Well, in this instance,  
15 it's my recollection -- although I haven't  
16 gone back to look at the decision, it is  
17 my recollection that the Supreme Court of  
18 Montana found that the State had an  
19 independent duty to at least some of the  
20 Libby claimants and that with respect to  
21 the State of Montana, that's what I had in  
22 mind.

23 **Q. You had in mind the**  
24 **Montana's Supreme Court decision?**

1 A. Yes.

2 Q. As you sit here today as a  
3 representative of the estate, how do you  
4 define independent conduct on the part of  
5 the State of Montana?

6 MS. HARDING: Object to  
7 form and object to the extent that  
8 it calls for legal analysis and  
9 legal conclusion. I think it's an  
10 improper question but -- and it's  
11 overly broad. To the extent you  
12 can answer, go ahead. And if you  
13 can't answer, I would caution you  
14 not to speculate, so...

15 A. Conduct that, you know, for  
16 which Grace has no liability and which is  
17 not derivative of any Grace liability.

18 Q. Let me follow up with:  
19 What do you mean by derivative on the part  
20 of Grace?

21 MS. HARDING: Same  
22 objection.

23 A. I'm sure --

24 MS. HARDING: I just want

1 to object to the extent that it  
2 calls for a legal conclusion under  
3 Montana law so --

4 A. And I'll add I'm sure  
5 there's a better way to articulate it but  
6 I really don't have an explanation better  
7 at this point.

8 Q. And do you believe that it  
9 relates to what would be --

10 A. Could you repeat the  
11 question, please?

12 Q. -- derivative under Montana  
13 law?

14 MS. HARDING: Can you just  
15 restate the question, please?

16 Q. Sure. That was  
17 inarticulate. I apologize.

18 I was asking you what did you mean  
19 by derivative liability and I believe your  
20 answer was you couldn't articulate that.  
21 Is that fair to say?

22 A. Yes. Sitting here, I  
23 really don't feel comfortable trying to  
24 articulate it.

1           Q.       If we wanted to find out  
2       what derivative liability is, where would  
3       you look?

4           A.       I would --

5                   MS. HARDING: Object to  
6       form.

7           A.       I would want to conduct  
8       some legal research on it.

9           Q.       Mr. Finke, I believe you  
10       had testified earlier in the line of  
11       questioning from Mr. Lewis as to the  
12       benefits the Plan proponents received from  
13       the channeling injunction and one of those  
14       benefits you articulated to be it enabled  
15       the debtors to apply uniform standards to  
16       similar claims to avoid inequities of the  
17       tort system. Is that a fair  
18       characterization of your earlier  
19       testimony?

20          A.       Yes, that was one of the  
21       reasons.

22          Q.       Okay. Do you consider the  
23       State of Montana's contribution and  
24       indemnity claims similar to other claims

1     **that would be funneled into this Trust?**

2                     MS. HARDING: Object to  
3                     form.

4                     A.     Yes.

5                     **Q.     On what basis do you make**  
6     **that answer, sir?**

7                     MS. HARDING: Object to the  
8                     extent it calls for a legal  
9                     conclusion or attorney-client  
10                    privilege or work product  
11                    communications. To the extent that  
12                    it doesn't, you can try to  
13                    answer.

14                    A.     To the extent that they  
15     arise out of asbestos PI claims.

16                    **Q.     Is there any other basis**  
17     **that you claim that the contribution and**  
18     **indemnification claims of the State is**  
19     **similar to other claims funneled into the**  
20     **Trust?**

21                    MS. HARDING: Object to the  
22                    extent it calls for a legal  
23                    conclusion and analysis and --

24                    A.     Not that I can think of.

1 MR. MANGAN: Thank you, Mr.  
2 Finke. That's all the questions I  
3 have right now.

4 MS. HARDING: Is there  
5 somebody else on the phone that  
6 wanted to ask questions?

7 MR. DOWNEY: Yes, this is  
8 Phil Downey on behalf of Scotts.  
9 Would I be next?

10 MS. HARDING: Yes, sure.

11 EXAMINATION BY

12 MR. DOWNEY:

13 Q. Good afternoon, Mr. Finke.  
14 My name is Phil Downey. I'm counsel for  
15 The Scotts Company. Can you hear me  
16 okay?

17 A. Yes, I can.

18 Q. Do you need to take a  
19 break? If not, we can press on.

20 A. No, this is fine.

21 Q. Most of my questions are  
22 going to be on Section 5.12 of the Trust  
23 Distribution Procedures and trying to get  
24 some clarification on that. Do you have

1     that document in front of you, sir?

2             A.     I'm looking for it.    Okay,  
3     I have it.

4             Q.     And, for the record, so  
5     it's identified, is that marked as a  
6     particular exhibit?

7             A.     Yes, this is marked as  
8     Finke Exhibit 7 and it's the Trust  
9     Distribution Procedures which are Exhibit  
10    4 to the Exhibit Book.

11            Q.     Okay.   And on page 47 is  
12    where I understand we'll find Section  
13    5.12.

14            A.     Correct.

15            Q.     And if you take a look at  
16    the first paragraph there, that's where  
17    most of my questions are going to be  
18    derived.   Have you seen that before?

19            A.     Yes, I have.

20            Q.     And it defines there a term  
21    called "insurance-related TDP claim" and  
22    then it says "such a claim that is  
23    channeled -- that is channeled to the PI  
24    Trust shall be reviewed, processed and, if